IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3489 of 2007 (O&M)

Date of Decision: 19.10.2007

Narender Mohan ...Appellant

Vs.

Hari Ram & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.V.K.Jain, Senior, Advocate,
Mr.Prashant, Advocate,
for the appellant.

Mr.Ajay Jain, Advocate,
for respondents No.3 and 4.

Vinod K.Sharma, J. (Oral)

This regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit for possession by way of specific performance filed by the respondent plaintiff to enforce the agreement dated 17.10.1983 has been decreed.

It was pleaded in the plaint that the plaintiff was always ready and willing to perform his part of the contract under the agreement dated

17.10.1983 and that he was entitled to get the sale deed executed in his favour on payment of Rs.48,000/- after adjusting Rs.25,000/- which was paid to the appellant-defendant at the time of execution of the agreement of sale.

The defendant contested the suit. While admitting the agreement of sale the defendant showed his willingness to execute the sale deed subject to the condition that the remaining land which is under the tenancy of the plaintiff-respondent shall be surrendered by handing over the possession back to him. The case set up by the defendant was that he had entered into an agreement on an assurance by the plaintiff-respondent that he would surrender his tenancy right over the remaining land, which was in his possession as tenant at will.

Learned courts below in view of the admission of the defendant-appellant regarding the execution of the agreement of sale, decreed the suit by observing that the plaintiff was always ready and willing to perform his part of the contract, whereas it was the defendant-appellant who was not willing to perform his part of the contract. The plea of the defendant appellant that the agreement was executed on the assurance that the land in possession of the plaintiff as tenant would be surrendered, was rejected on the plea that no oral evidence can be read in evidence to prove the documents. It was observed that as no such mention was made in the agreement of sale that it was subject to his surrendering possession over the remaining land. No reliance could be placed on oral

evidence led by the appellant.

The judgment and decree passed by the learned trial court was affirmed by the learned lower appellate court.

Mr.V.K.Jain, learned senior counsel appearing on behalf of the appellant contends that the following substantial questions of law arise for consideration in this appeal:

1. Whether the courts below were justified in decreeing the suit filed by the plaintiff-respondent in spite of the fact that Palia plaintiff did not appear in the witness box to support his case?
2. Whether non-appearance of Palia would lead to a conclusion that the case set up by the defendant-appellant qua surrendering of tenancy stood proved?
3. Whether the courts below were justified in decreeing the suit by ignoring the provisions of Section 20 of the Specific Relief Act, 1963?

In support of the above mentioned questions of law learned senior counsel for the appellant by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. And others AIR 2005 SC 439** contends that it was Palia alone who had personal knowledge about the transaction and therefore, the evidence led by the attorney on his behalf could not be accepted to defeat the rights of the defendant-appellant, therefore, the courts

below committed an error in decreeing the suit.

This plea of the appellant cannot be accepted. The learned courts below have rejected the plea raised by the appellant-defendant in view of Sections 91 and 92 of the Evidence Act which bar the leading of oral evidence with regard to the documents. It is not the case set up by the defendant-appellant that any independent or prior oral agreement was entered into between the parties. The positive stand of the appellant was that this agreement was entered into on the assurance given by the plaintiff-respondent that he would be surrendering his tenancy right over the remaining land. However, keeping in view the fact that no such stipulation was contained in the agreement executed between the parties, the learned courts below were justified in rejecting the case set up by the defendant-appellant. It cannot be said that the attorney was not competent to depose qua the written agreement which was proved on record. Rather the factum of execution of the agreement was duly admitted by the defendant-appellant and therefore, the first question of law sought to be raised does not arise and in any case has to be answered against the defendant-appellant.

Mr. V.K.Jain, learned senior counsel appearing on behalf of the appellant thereafter contended that the value of the property in dispute is much higher and keeping in view the relationship of the parties i.e. of landlord and tenant it has to be held that the respondent plaintiff was in dominating position in getting the contract executed.

In order to show that the plaintiff-respondent was in

dominating position the learned senior counsel contends that the price of the land at the time of agreement of sale was about Rs.4 lacs per acre whereas it was agreed to be sold at the rate of Rs.73,000/- per acre, therefore, provisions of Section 20 of the Specific Relief Act (for short the Act) come into operation as Section 20 (2) (a) provides that the contract which gives unfair advantage to the plaintiff cannot be enforced.

Learned senior counsel also contends that as the value of the property as on the date is Rs.6 crores per acre in view of area coming within the municipal limits the execution of the agreement would cause undue hardship and therefore, he is entitled to protection of section 20 (b) of the Act. Learned senior counsel further contends that as the relief of specific performance is an equitable relief and in order to do equity he is prepared to give Rs.25 lacs in case the plaintiff-respondent retains the possession and does not get the sale deed executed and in alternative would give Rs.1 crore in case the plaintiff-respondent returns the possession.

This plea of the learned counsel for the appellant also cannot be accepted in view of law laid down by Hon'ble Supreme Court in the case of **Savita Rani Vs. Deepak Rai 2001 (2) RCR (Civil) 647** as no such plea was raised before the learned courts below as in order to take benefit under section 20 of the Act the parties have to set up their case before the learned trial court and lead evidence on the said point.

The only contention raised by the appellant before the learned courts below was that there was inadequacy of consideration. The said

contention was considered and rejected and no error can be found with the said finding.

It may also be mentioned that in support of the contention that the appellant was entitled to the benefit of section 20 of the Act reliance was placed on the judgment of Hon'ble Supreme Court in the case of **His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar (1996) 4 SCC 526.**

The judgment does not support the case of the appellant defendant as in the present case it was proved on record that the plaintiff had gone for registration of the agreement of sale on the date fixed and thereafter had even issued notice to the defendant appellant to execute the sale deed on the date fixed. However, it was the defendant-appellant who was not ready and willing to execute the sale deed on the plea that the plaintiff has to first surrender the possession of the remaining land and therefore, the defendant-appellant was not ready to get executed the sale deed. Consequently, the questions of law as framed do not arise in this appeal or in any case have to be answered against the appellant.

No ground is made out to interfere with the concurrent findings of fact and substantial question of law sought to be raised are to be answered against the appellant.

Dismissed.

(Vinod K.Sharma)
Judge

19.10.2007
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